In the High Court of Uttaranchal at Nainital.

Criminal Revision No. 540/2001
(Old No. 1480/1994)

Shiv Dutt and four others …….Revisionists.

Vs.

Chandan Singh ….. Respondent.

Hon'ble Irshad Hussain, J.

Heard Sri Anoop Kumar Verma in brief for Sri C.D. Bahuguna learned counsel for the revisionists, Sri Ganesh Pandey in brief for Sri B.D.Upadhyaya learned counsel for the respondent and Sri G.S.Sandhu learned A.G.A. revisionist Nos.2 and 5 are since deceased. The arguments have been heard on behalf of the remaining revisionists.

2- By way of this revision under section 397/401 of the Code of Criminal Procedure (for short 'Code') the judgment and order challenged is dated 19-8-1994 passed by Sessions Judge, Almora in criminal revision no.22/1992 whereby the judgment and order dated 10-6-1992 passed by the Pargana Adhikari Ranikhet in criminal case no. 1/1992 under section 147 of the 'Code' was modified and both the revisionists and respondent were held to have a right to use the disputed water channel. The respondent was held entitled to take water from the disputed water channel through polythene pipes for domestic use only while the remaining water was to be used by the first party, the present revisionists.

3- Having gone through the record of the case it is evidence that before the learned Sessions Judge the evidence was produced to indicate that the respondent's father Hayat Singh had also been given sanction to use the water from the disputed water channel for domestic purposes only. A letter dated 16th March 1992 issued by the Diisional Forest Officer (West) Almora was also produced indicating that the father of the respondent was given valid sanction by the appropriate government to take water from the disputed water channel through Karchuli compartment nos. 1 and 2 of reserve forest by use of polythene pipes. From the evidence it was thus found that on the date of the dispute the respondent had also valid permission and the

revisionists to use the water from the disputed water channel and this aspect of the matter was not considered by the learned S.D.M., Ranikhet. On consideration of the evidence the learned Sessions Judge was thus fully justified in modifying the order as mentioned above. There is absolutely no perversity whatsoever in the approach of the learned Sessions Judge and therefore the petition lack merit and is liable to be dismissed.

4- The revision petition is dismissed.

(Irshad Hussain, J.)

Dated: 19-05-2004
ISB